

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BEVERLY AHNERT, Individually and
as Executrix of the Estate of Daniel
Ahnert, Deceased,

Plaintiff,

v.

Case No: 13-C-1456

BRAND INSULATIONS INC et al.,

Defendants.

COURT MINUTES
HONORABLE CHARLES N. CLEVERT, JR., PRESIDING

Date: June 17, 2014

Proceeding: Telephonic Conference/Motion Hearing

Deputy Clerk: Kris Wilson Court Reporter: FTR Gold

Start Time: 4:10:59 p.m. End Time: 5:31:01 p.m.

Appearances: P: Attorneys Jin Ho Chung and Robert G. McCoy
Ds: Attorney Eric Carlson for Brand Insulations, Inc
Attorney Sarah Thomas Pagels for Building Services
Industrial Supply Inc
Attorney Roshan N. Rajkumar for CBS Corp
Attorney Travis Rhoades for Employers Insurance Co of
Wausau, Sprinkmann Sons Corp and WEPCO
Attorney Steven Celba for Foster Wheeler, LLC
Attorney Nora Gierke for GE Company
Attorney Frank Terschan by L&S Insulation Co Inc
Attorneys Brian O'Connor Watson and Josh Lee for
Owens-Illinois Inc
Attorney Michael Antikainen for Pabst Brewing Co
Attorney Robert Driscoll for Merco-Thermotec Inc

Disposition: Court grants plaintiffs' oral motion to depose Mr. Lewitzke. Parties
to proceed with the deposition as may be agreed.

Court grants Owens-Illinois Inc.'s Motion to Dismiss. [14]. Counsel shall prepare proposed findings of fact and conclusions of law.

Notes:

Attorney McCoy is sending out all transcripts, and bankruptcy filings, to the defense tomorrow. Parties will then set a date for Lewitzke's deposition.

Since the last hearing, the plaintiff submitted a supplemental brief [50] which sets forth a time line and proceedings in the MDL case 875, along with 10 exhibits. Attorney Lee is aware of the filing and is prepared to address it today. Therefore, the court will take the supplemental brief [58] and exhibits into consideration.

Court hears arguments regarding preclusion.

Court believes it should consider the motion to dismiss not just as a request to decide the matter solely on the complaint, but instead on the basis of additional documents of which it may take judicial notice. Consequently, the court believes it can properly consider the MDL proceeding.

On the basis of the record, the court is satisfied that OI has shown that the plaintiffs should be barred from proceeding further in this action on the mesothelioma claim. The record demonstrates that the plaintiffs previously agreed to dismissal of the non-malignancy claim which was subject to attack in OI's motion for summary judgment in the MDL action pending in the Eastern District of Pennsylvania. Further, it is clear that plaintiffs knew of the mesothelioma claim as of January 4, 2011, and that the claim had not been included in the MDL proceeding prior to the motion for summary judgment. That claim certainly was known to plaintiffs at the time the stipulation was entered into and resulted in the dismissal of the non-malignancy claim.

Court addresses claim preclusion and the need for finality of litigation.

Counsel for OI shall prepare proposed findings of fact and conclusions of law for review by opposing counsel within the next 5 days.